

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

TIMOTHY L. ELLIS,

Petitioner,

-v-

9:22-CV-589

JOSEPH E. COREY,

Respondent.

APPEARANCES:

OF COUNSEL:

TIMOTHY L. ELLIS

Petitioner, Pro Se

17-B-1270

Auburn Correctional Facility

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ROBERT C. MCIVER, ESQ.

Ass't Attorney General

DAVID N. HURD

United States District Judge

ORDER ON REPORT & RECOMMENDATION

On June 6, 2022, *pro se* petitioner Timothy Ellis (“petitioner”) filed this action seeking habeas corpus relief. Dkt. No. 1. After an initial review of the petition, respondent Joseph E. Corey (“respondent”), the Superintendent of

the facility where petitioner was being held in state custody, was ordered to respond, Dkt. No. 3. Thereafter, the parties briefed the matter, Dkt. Nos. 11, 18–19, 22, and U.S. Magistrate Judge Daniel J. Stewart advised by Report & Recommendation (“R&R”) that the petition should be denied and dismissed in its entirety, Dkt. No. 27.

Petitioner has filed objections. Dkt. No. 28. Broadly speaking, petitioner’s objections challenge the legal consequences of certain events that occurred in the state-court criminal proceedings. In particular, petitioner reiterates his assertion that the prosecution should be faulted for provoking the mistrial, which means Double Jeopardy should have barred the re-trial where he was ultimately convicted.

But this Fifth Amendment exception to the rule permitting re-trials is a limited one. And it does not bar a re-trial in cases where, as here, the record below demonstrates that the conflict was promptly raised and the issue was fully explored by the presiding state-court judge. In short, there is nothing in the record or in petitioner’s submissions to substantiate his argument that the prosecution’s conduct was intentional. And a review of petitioner’s other objections confirm that he has not identified any errors that would warrant rejection or modification of the R&R.

Thus, upon *de novo* review, the R&R is accepted and will be adopted. *See* 28 U.S.C. § 636(b)(1)(c).

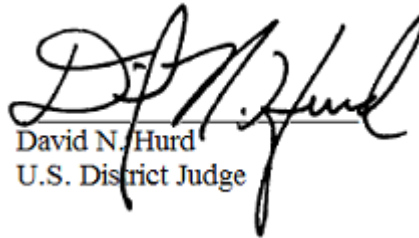
Therefore, it is

ORDERED that

1. The Report & Recommendation is ACCEPTED;
2. The petition is DENIED and DISMISSED; and
3. No Certificate of Appealability shall be issued.

IT IS SO ORDERED.

Dated: December 20, 2023
Utica, New York.



David N. Hurd
U.S. District Judge